

REMARKS

The present application is subject to a restriction requirement between the claims 1-24 of Group I, and the claims 25-40 of Group II. By this amendment, claims 16 and 17 have been amended to correct minor typographical errors and independent claim 25 and dependent claims 38-40 have been amended to conform with limitations recited in independent claim 1. No new matter has been added by these amendments.

I. TRAVERSE OF RESTRICTION REQUIREMENT

Applicant traverses the restriction requirement with respect to original claims 1-40. Pursuant to MPEP §803, a restriction requirement is proper only if: (1) the inventions are independent or distinct as claimed, and (2) there would be a serious burden on the examiner if the restriction is not required. Without addressing the issue of whether the method and system of extraction of sinusoids and the audiometer employing said method of extraction of sinusoids are patentably distinct from each other, applicant respectfully submits that a search and examination of the original claims 1-40 would not impose a serious burden on the examiner.

Specifically, referring to the second requirement, §803 recites that "if the search or examination of an entire application can be made *without serious burden*, the examiner *must examine it on the merits*, even though it includes claims to independent or distinct inventions" (emphasis added). There is no evidence in the record that search and examination of the entire application would be any burden, much less a serious burden, on the examiner, as is necessary for upholding a proper restriction requirement.

To further support the applicant's position, a complete search of the claims of Group II would require a search directed to subject matter of the original claims from Group I. Since the search and examination of the entire application can be made without serious burden on the examiner, it is wasteful of time, effort, and resources for both the applicant and the Patent Office to prosecute the claims in separate applications. Search and examination of all claims together in this application would be much more efficient than requiring both the Patent Office and the applicant to do so separately in multiple applications.

Finally, applicant submits that original claims 1-40 are directed to the same essential characteristic, i.e., extraction of sinusoids, of the disclosed embodiment. Thus, pursuant to MPEP §806.03, restriction between the claims is never required.

For all these reasons, applicant believes that restriction is not required in this instance and must be withdrawn. Search and examination of the original claims 1-40 pending in the present application is hereby respectfully requested.

II. PROVISIONAL ELECTION REQUIRED UNDER 37 C.F.R. §1.143

In order to comply with 37 C.F.R. §1.143, applicant provisionally elects, with traverse, claims 1-24 of Group I.

It should be noted that subject matter of amended independent claim 25 conforms with subject matter recited in claims 1-24 of Group I. Thus, applicant submits that claims of Groups I and II, i.e., original claims 1-24 and amended claims 25-40, disclose a single inventive concept that can be searched and examined without serious burden. Applicant requests

withdrawal of the pending restriction requirement, and that claims 1-24 of Group I, and amended claims 25-40 of Group II be searched and examined on their merits.

III. CONCLUSION

For these foregoing reasons, applicant respectfully requests an action on the merits of all the claims and a Notice of Allowance thereof. If there are any additional fees or refunds required, the Commissioner is directed to charge or debit Deposit Account No. 13-2855 (29888/39521).

Respectfully submitted,

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